

ANGELO J. SPARACINO

IBLA 85-273

Decided April 9, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease parcel applications M-61389 and M-61426.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Filing

Where amended regulations define any person or entity in the business of providing assistance to participants in the Federal simultaneous leasing program as one who signs, prepares, completes, or formulates applications, an entity which provides an applicant with parcel recommendations in the form of parcel numbers only has not "formulated" the application within the meaning of 43 CFR 3112.0-5 or 43 CFR 3112.2-4.

APPEARANCES: Angelo J. Sparacino, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Angelo J. Sparacino has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 3, 1985, rejecting his simultaneous oil and gas lease application for M-61389 and M-61426. Sparacino's application was drawn with first priority for parcels Mt-166 and Mt-203 in the August 1984 simultaneous oil and gas lease drawing.

BLM rejected Sparacino's application because he failed to indicate the name of an entity which might have provided him with assistance. Part B (Form 3112-6a) of Sparacino's application contained a designated space for insertion of the full name, address, and zip code of a filing service. Sparacino left that portion blank, and made no reference to any entity or person providing assistance to him with his application. BLM determined, after Sparacino had submitted additional information pursuant to its request, that National Energy Consultants, Corporation (NECC) provided Sparacino

assistance in filing his application and, accordingly, rejected his simultaneous oil and gas lease application, citing 43 CFR 3112.2-4.

In his statement of reasons on appeal, Sparacino argues NECC offered him no help in filing his application nor any assistance other than advising him concerning a choice of tracts from which to select.

By notice to Sparacino dated October 23, 1984, the Wyoming State Office, BLM, requested further information regarding the nature of appellant's relationship with NECC. Appellant was asked to provide copies of any service agreements or contracts between him and NECC or to provide a statement of the type of services provided. By letter dated November 5, 1984, appellant submitted the following statement in response to BLM's request: "This company was hired to advise me in the filing procedure and recommend specific parcels which they believe offer the best chance of success. However, I'm sorry I engaged this company as they stuck me for \$ 7,200. which I believe is highway robbery for the little service they provided."

BLM has provided examples of NECC literature included in filings made by other applicants. The literature consists of parcel recommendation sheets prepared by NECC. BLM has also included an example of an NECC advisory agreement. The agreement states that the fees paid to NECC are for "Advisory Services Only." Section 5 of the agreement states:

Selection: The suggested recommendation of the parcels is to be made by National Energy Consultants, Corp. from a list provided by The Bureau of Land Management. National Energy Consultants, Corp. shall under no circumstances participate in any profits or overriding royalties acquired by the Client. Each filing period, National Energy Consultants, Corp. will forward to the Client parcel recommendations. The filing fees to be paid to the appropriate agency are to be borne by Client. All fees paid are for advisory services only and are non-refundable. [Emphasis in original.]

Section 6 of the agreement provides that the agreement and warranty constitute the entire understanding of the parties and that the client agrees that no representations have been made, oral or implied, to enter into this agreement other than those expressly set forth.

[1] The facts of this appeal are nearly identical to those described in Ronald Valmonte, 87 IBLA 197 (1985). In Valmonte, as here, minimal assistance was rendered to an oil and gas lease applicant by a business which provided advice concerning the selection of Federal lands available for oil and gas lease. Id. at 200. In Valmonte this Board, after analysis of the regulation governing filing assistance, concluded that the regulation, as amended, 43 CFR 3112.0-5, could not be invoked to invalidate Valmonte's offer. The Valmonte decision explains this conclusion is required because the clear effect of changes made to the regulation governing disclosure of the use of a filing service was to exclude from disclosure the use of services offering only advice, as in this case. Following the reasoning in Valmonte, unless a business has "signed or formulated or prepared or otherwise completed" an application, there is no need to disclose the name of a

business entity which offered advice to the oil and gas lease applicant. Id. at 202.

Here, in exchange for \$ 7,200, NECC was to provide Sparacino with 30 recommendations and an envelope in which to send his application to BLM. There is no evidence of any other filing assistance by NECC in this case. Therefore, the question before the Board is whether under the new regulation, the activities performed for Sparacino make NECC a "filing service" for Sparacino which would serve as a basis for rejection of Sparacino's application because of his failure to place NECC's name and address in the indicated box on the application.

NECC cannot be said to have actually "formulated" appellant's application. Unlike the situation in John G. O'Leary, 86 IBLA 131 (1985), where the filing service actually filled in the application, prepared a remittance with the proper amount to cover filing fees, and transmitted the application to the applicant with instructions that "your only responsibility is to sign your name on Part B as it appears on Part A," NECC neither filled in any of Part B nor sent any remittance for the filing fees. Rather, completion of Part B and the submission of a remittance were the sole responsibility of appellant. The fact he chose to make application for all of the parcels recommended by NECC merely brings this case closer to the Valmonte situation, where exactly the same transaction took place. Appellant may well have formulated his application based upon the advice supplied by NECC, but that formulation was, applying the logic of Valmonte, his own.

Since NECC neither signed, nor formulated, nor prepared or otherwise completed appellant's application, there is no basis for concluding NECC was required to be listed on Part B. See Ronald Valmonte, supra. That being the case, the decision rejecting appellant's application cannot be sustained.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case file remanded for further action not inconsistent with the views expressed herein.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Bruce R. Harris
Administrative Judge

